

Message Text

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C O N F I D E N T I A L STATE 175936

MANILA FOR USDEL,CINCPAC ALSO FOR POLAD

E.O. 11652:GDS

TAGS: MARR, RP

SUBJECT: PHILIPPINE BASE NEGOTIATIONS: CRIMINAL JURIS-
DICTION, ARTICLE XIV; CLAIMS, ARTICLE XV

REF: MANILA 9653, USDEL 66

1. CONSIDERING HISTORY OF PARA 14 OF ARTICLE XIV OF U.S.
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DRAFT RECOUNTED REFTTEL, WE APPRECIATE DIFFICULTY OF AMENDING

LANGUAGE AT THIS LATE DATE. NEVERTHELESS, SWEEPING WORDING OF THIS PARAGRAPH (;IN EVERY CASE") EXCEEDS ITS PURPOSE, I.E., A SAVINGS CLAUSE. THUS, IF POSSIBLE, WE WOULD LIKE U.S. DELEGATION TO TABLE REVISED PARA 14 BELOW. IF USDEL FEELS THIS CANNOT BE DONE WITHOUT CREATING SERIOUS PROBLEM, PLEASE ADVISE. FOLLOWING IS REVISED TEXT OF PARA 14:
QUOTE: 14. THE EXERCISE BY THE UNITED STATES OF JURISDICTION OVER AN OFFENSE SHALL NOT PREVENT THE INSTITUTION BY THE OFFENDED PARTY OF A SEPARATE CIVIL ACTION AGAINST THE OFFENDER IN A PHILIPPINE COURT."

2. CONCERNING CLAIMS ARTICLE, REGRET DELAY IN PROVIDING REVISED TEXT. WE APPRECIATE PHILIPPINE LEGITIMATE CONCERN EXPRESSED PARA 4 REFTEL THAT INJURED PARTY NOT BE LEFT WITHOUT A REMEDY IN OFFICIAL DUTY CASES IF THE CLAIM IS NOT PAID UNDER CLAIMS PROCEDURE. WE ALSO APPRECIATE EMBASSY'S POINT THAT DISTINCTION BETWEEN OFFICIAL DUTY AND NON-OFFICIAL DUTY CASES IS PARTICULARLY RELEVANT TO NATO-TYPE SITUATION IN WHICH THERE IS RECEIVING STATE ADJUDICATION AND COST SHARING FORMULA. NEVERTHELESS, WE WOULD LIKE TO AVOID PROVISION EXPRESSLY SUBJECTING INDIVIDUAL MEMBERS OF THE FORCE AND CIVILIAN COMPONENT TO SUITS FOR INDIVIDUAL CIVIL LIABILITY ON ACCOUNT OF THEIR OFFICIAL ACTS. IN OFFICIAL ACTS CASES, SUIT IS APPROPRIATELY AGAINST USG RATHER THAN AGAINST INDIVIDUAL, SUBJECT, OF COURSE, TO ANY DEFENSES AVAILABLE UNDER PHILIPPINE OR INTERNATIONAL LAW, INCLUDING SOVEREIGN IMMUNITY IN CASES WHERE THIS DEFENSE WOULD BE CONSISTENT WITH USG POLICY ON SOVEREIGN IMMUNITY (E.G., DISCRETIONARY FUNCTIONS, LIBEL AND SLANDER CASES). WE WOULD ALSO LIKE, IF POSSIBLE TO BUILD INTO CLAIMS ARTICLE A REQUIREMENT THAT CLAIMS PROCEDURE BE REMEDY OF FIRST RESORT SO AS TO AVOID UNNECESSARY LITIGATION IN CASES WHERE CLAIM CAN READILY BE SETTLED ADMINISTRATIVELY.

3. TO TAKE ACCOUNT OF ABOVE POINTS, USDEL IS AUTHORIZED TO TABLE FOLLOWING FIRST SENTENCE PARA 3 CLAIMS ARTICLE:
QUOTE: NOTHING IN THIS ARTICLE SHALL AFFECT THE JURISDICTION OF A PHILIPPINE COURT OR ADMINISTRATIVE TRIBUNAL TO ENTERTAIN CIVIL ACTIONS WHICH UNDER THE LAWS OF THE PHILIPPINES MAY ARISE FROM THE OCCURRENCE GIVING RISE TO
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A CLAIM WHICH HAS BEEN PRESENTED FOR PAYMENT UNDER THIS ARTICLE BUT HAS NOT BEEN SETTLED AND PAID AS PROVIDED HEREIN. UNQUOTE

4. IN EVENT REFERENCE TO EXHAUSTION OF ADMINISTRATIVE REMEDIES IN FIRST SENTENCE IS NOT CONSIDERED USEFUL BY USDEL, LANGUAGE "WHICH HAS BEEN PRESENTED..." MAY BE DROPPED AND LANGUAGE PARA 6 REFTEL "UNLESS AND UNTIL

THERE HAS BEEN PAYMENT IN FULL SATISFACTION OF THE CLAIM"
MAY BE SUBSTITUTED. SECOND SENTENCE OF PARA 6 REFTEL MAY
BE PRESENTED AS IT.

5. IN PRESENTING ABOVE PARA 3 ON CLAIMS, IT SHOULD BE
EXPLAINED TO PHILS THAT REASON FOR ELIMINATION OF
REFERENCE TO ACTIONS "AGAINST THE OFFENDER" IS THAT USG
CONSIDERS THAT INDIVIDUAL MEMBERS OF FORCES AND CIVILIAN
COMPONENT CANNOT APPROPRIATELY BE MADE PERSONALLY LIABLE
FOR CIVIL DAMAGES FOR ACTS DONE IN THE COURSE OF THEIR
OFFICIAL DUTIES AND THAT IN THE EVENT OF CIVIL ACTIONS
AGAINST SUCH INDIVIDUALS FOR CLAIMS ARISING OUT OF THEIR
OFFICIAL ACTS, THE USG WILL ASSERT ITSELF AS THE PROPER
PARTY IN INTEREST. IT SHOULD ALSO BE EXPLAINED TO PHILS
THAT ABOVE PROVISION CANNOT REPEAT CANNOT BE CONSIDERED
TO CONSTITUTE A WAIVER OF USG'S RIGHT TO ASSERT DEFENSE
OF SOVEREIGN IMMUNITY IN APPROPRIATE CASES CONSISTENT WITH
ITS POLICY ON SOVEREIGN IMMUNITY AND INTERNATIONAL LAW.

6. IF QUESTION IS RAISED RE RELATIONSHIP PARA 14 OF
ARTICLE XIV, IT SHOULD BE POINTED OUT THAT PARA 14 REFERS
TO INSTITUTION OF CIVIL ACTIONS, BUT THAT IT DOES NOT
CONSTITUTE WAIVER OF ANY DEFENSES AVAILABLE UNDER PHIL OR
INTERNATIONAL LAW IF SUCH ACTIONS ARE INSTITUTED. THUS,
IF SUIT AROSE IN OFFICIAL DUTY CASE, WE WOULD BE FREE TO
DENY PERSONAL RESPONSIBILITY OF MEMBERS OF FORCE FOR
CIVIL DAMAGES. KISSINGER

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